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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1945.

No. 25

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION (a corporation); ALASKA SALMON COMPANY (a corporation), and RED SALMON CANNING COMPANY (a corporation), *Petitioners*,

v.

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5, on behalf of Applicants, *Respondents*.

**On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.**

## BRIEF FOR RESPONDENTS

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1945.

No. 309.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION (a corporation); ALASKA SALMON COMPANY (a corporation), and RED SALMON CANNING COMPANY (a corporation), *Petitioners,*

v.

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5, on behalf of Applicants, *Respondents.*

**On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.**

## BRIEF FOR RESPONDENTS.

## STATEMENT OF THE CASE.

The question presented to this Court, as in the various hearings below, is this: *Were Respondents unemployed during the 1940 Alaska salmon season due to a labor*

*dispute in active progress at the factory, establishment, or other premises at which they are or were last employed within the meaning of Section 5(d) of the Alaska Unemployment Compensation Law?* (Hereinafter called Act.) If they were not, then the decision of the Circuit Court must be affirmed.

All of the Respondents were employed as cannery workers by either Alaska Packers, Alaska Salmon, or Red Salmon (hereinafter called Employers) in Alaska during the 1939 salmon season. *When the 1939 season ended, the employment of each worker was finished, and he was separated from his employer's payroll as a result of the season's being at an end. Thereupon, the employer-employee relationship between them (within the meaning of the Act) terminated and was not resumed during the 1940 season.*

Respondents worked during 1939 under a contract between their Union (Alaska Cannery Workers Union, Local No. 5) and the Employers. That contract by its terms was to be renewed from year to year unless either party terminated it. In the fall of 1939 the Employers terminated the contract. (R. p. 267.)

Negotiations between the Union and the Employers commenced in March of 1939 and continued during that month and April, 1939. The Union submitted a contract which called for wage increases and other improvements over the 1939 contract. (R. p. 275.) The Employers rejected this. (R. p. 39.) The Employers offered the Union a contract which proposed wage reductions and other poorer conditions than were provided by the 1939 contract. (R. p. 39, 92-94, 333.) The Union rejected the Employers' proposal. The Union finally offered to re-execute the 1939 San Francisco contract. (R. pp. 40, 94-95, 106, 111, 139, 188, 254, 517, 518, 602-604.) The Employers refused. The Employers never at any time offered to re-execute the 1939 San Francisco contract. (R. pp. 84, 111, 139, 185, 333, 341, 524.)

On April 3, 1940, the Employers notified the Union that if an agreement were not reached by April 10, 1940, the Karluk expedition would be called off; and if no contract were reached by April 12, 1940, the Chignik operation would be called off. (R. pp. 325-326.) Those "deadline" dates came and passed without a contract, and the operations were called off, and the matter was at an end between the parties so far as these operations for 1940 were concerned. The parties never met again concerning them nor did they discuss these operations after the "deadline" dates fixed by the Employers. Negotiations were transferred to Seattle on April 1, 1940 (R. pp. 321, 333), and these negotiations resulted in an agreement for operating out of the Northwest to Alaska, but specifically excluded operating out of San Francisco. (R. p. 341.)

On April 26, 1940, the Employers notified the Union that unless an agreement were reached for the Bristol Bay operations by May 3, 1940, that operation would be called off. (R. p. 378.) *In the same letter, the Employers notified the Union that Alaska Salmon would not undertake any Bristol Bay operation during 1940.*

The May 3, 1940, deadline came and went without a contract for Bristol Bay, and the Employers called off that operation. After that date the parties, insofar as operations out of San Francisco were concerned, met no more and did nothing further with respect to Bristol Bay for 1940. The Bristol Bay season was called off by the Employers, as had been Karluk and Chignik, and that was that. The subsequent negotiations in Seattle applied only to operations out of that port.

It should be noted that the Commission by Benefit Regulation No. 10 (R. pp. 199, 201) had fixed the

Karluk season: April 5th-September 5th;
Chignik season: April 1st-September 10th;
Bristol Bay season: May 5th-August 5th.

Negotiations terminated on, and neither party did anything further with respect to 1940 operations at the respective areas after the following dates:

Karluk: April 10, 1940;
Chignik: April 12, 1940;
Bristol Bay: May 3, 1940.

At the Referee's hearing it was testified to, and it is not denied, that the Union and the Respondents never called a strike against, nor were they on strike against the Employers during 1940. (R. pp. 602-605.) Obviously, the Respondents never went to Alaska. The operations were never started during 1940. There was no operation to be interrupted by either strike or picket line.

The Respondents testified that they were willing and able to work at any time during 1940 in Alaska on the same basis that they worked in 1939. (R. pp. 84-85, 116, 178, 186, 260, 602-605.) However, no work was made available by the Employers to the Respondents on the basis of the 1939 San Francisco agreement. In fact, no work was made available to Respondents by the Employers for 1940.

Referee Roden found that a "labor dispute" existed, but that *it was not in active progress* at Karluk after April 10, 1940, nor at Chignik after April 12, 1940, nor at Bristol Bay after May 3, 1940, and that *accordingly claims filed for unemployment benefits after those dates should be allowed.*

The Commission and the District Court found that there was both a "labor dispute" and that it was "in active progress" during the entire 1940 season, and accordingly denied Respondents benefits for the eight week period provided by Section 5(d). The Circuit Court reversed the District Court upon the ground that if there were a labor dispute in active progress, it was not "at the factory, establishment or premises" at which Respondents are or were last employed, and therefore Respondents were not

disqualified for benefits within the strict language of the Act.

Respondents assert that (1) there was not a "labor dispute" within the meaning of the Act and therefore they were not at any time disqualified for benefits, but (2) that if there were a "labor dispute" it was not in "active progress" after the dates and for the reasons stated in Referee Roden's decision, (3) that if there were a labor dispute in active progress, it was not "at the factory, establishment or other premises at which they are or were last employed," and (4) their unemployment was not "due" to a labor dispute.

## SUMMARY OF ARGUMENT.

### I.

The Act, being remedial in nature, is to be liberally construed and with a view toward awarding, rather than denying, benefits. Exemptions from the benefits of the Act must be strictly construed.

### II.

Before a claimant can be disqualified under Section 5(d) of the Act, *all* of the factors of disqualification must be clearly present.

### III.

There was not a "labor dispute" within the meaning of Section 5(d) of the Act.

### IV.

There was not a labor dispute in "active progress" in this case.

### V.

There was not a labor dispute in active progress "at the factory, establishment or other premises" where Respondents "are or were last employed."

VI.

Respondents were not unemployed "due" to a labor dispute at the factory, establishment, or other premises where they are or were last employed.

## ARGUMENT.

### I.

**The Act, being remedial in nature, is to be liberally construed and with a view toward awarding, rather than denying, benefits. Exemptions from the benefits of the Act must be strictly construed.**

This is true of all unemployment compensation acts. The rule is stated in

*Danzer* v. *State Unem. Comm. of Oregon* (Circ. Ct. Oregon, County of Multnomah), C.C.H. Unemp. Ins. Service, Oregon #1980.001, former #8031, 1940:

> "The general purposes of the statute should be kept in view in construing its provisions. This is distinctly a remedial statute. It is an old rule, and one of universal acceptance, that a remedial statute should be liberally construed so as to suppress the mischief and advance the remedy. * * * Exceptions or exemptions to such a remedial statute should be strictly construed. * * * Where * * * workmen suffered enforced unemployment, they should be entitled to benefits unless they clearly fall within an excepted class. * * * If the real cause of the closure be in doubt, that doubt, under the liberal rule in relation to remedial statutes, ought to be resolved in favor of the workmen for whose relief the statute was enacted."

The Act itself declares its beneficent public policy:

> "Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is

> therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own." (R. pp. 708-709.)

The Court below announced this rule (149 Fed. (2d) 446, at p. 448) and this Court has declared the law so to be, *A. H. Phillips, Inc.* v. *Walling*, 324 U. S. 490, 89 L. Ed. 705, 65 S. Ct. 807, in a case involving the Fair Labor Standards Act where the same rule of statutory construction applies.

The Supreme Court of California (the state of residence of the Respondents) has held similarly concerning the California Unemployment Insurance Act (Deering's General Laws, (Calif.) Vol. 3, Act. 8780d), in the case of *California Employment Commission* v. *Los Angeles Downtown Shopping News Corp.*, 24 Cal. (2nd) 421, at p. 427,

> "It is a remedial statute and as such must be liberally construed for the purpose of accomplishing its objects."

The Alaska Act, the California Act, the Oregon Act, in fact all of the state and territorial acts, were adopted in conformity with the federal Social Security Act (Act of August 14, 1935, 49 Stat. 620, *et seq.*, as amended, 42 U. S. C. A. Secs. 301-1321, and particularly 49 Stat. 626, *et seq.*,

as amended, 42 U. S. C. A. 501-503), with a national objective on the part of Congress and the several states and territories to alleviate the distress and economic hardship which arose from widespread unemployment. These laws met the challenge of unconstitutionality in this Court, *Charles C. Steward Machine Co.* v. *Davis*, 301 U. S. 548, 81 L. Ed. 1279, 57 S. Ct. 883; *Helvering* v. *Davis*, 301 U. S. 619, 81 L. Ed. 1307, 57 S. Ct. 904.

Mr. Justice Cardozo, speaking for the Court in the former case, stated the reason for the law, 301 U. S. at p. 586,

> "During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. • • • The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve."

Similarly, a broad view is taken of who are employees within the meaning of the Social Security Act, so that coverage will be as extensive as possible. The rule is stated in *Willard Sugar Co.* v. *Gentsch*, 59 Fed. Supp. 82, at p. 83,

> "It is evident to this court that it was the intent of the act to provide security for all who are dependent for their livelihood upon obtaining work from others, rather than upon earning a living in their own business ventures, subject, of course, to the exceptions delineated in the statute.
>
> "That is the plain implication of the statement as to the Congressional intent reflected in the report of the House Ways and Means Committee, at the time of the enactment of the 1939 amendments to the Social Security Act (H. Rep. No. 728, 76th Cong., 1st Sess., p. 76), wherein it was stated: 'A restricted view of the employer-employee relationship should not be taken in the administration of the Old Age and Survivors Insurance system in making coverage determinations. The tests for determining the relationship laid down in cases relating to tort liability and to the common law conception of master and servant should not be narrowly applied . . .'

> "From this language it is apparent that the framers of the act planned to extend the benefits of the legislation to as wide a class as could be comprehended within the meaning of the term employee, rather than to limit it to narrowly restricted definitions . . ."

Exempt employment is strictly construed. Thus in a case where it was sought to exclude from the coverage of the Social Security Act persons who were claimed to be exempt agricultural workers, the law is that the exemption must be strictly construed with the view of making the Act's coverage as broad as possible. In *Latimer* v. *United States*, 52 Fed. Supp. 228, at p. 234, the Court states:

> ". . . a realistic approach to the social and economic security of employees in present-day large scale enterprises of all kinds requires that all doubt in construing remedial statutes providing unemployment insurance and old age protection and containing tax impositions should favor coverage rather than exemption. Of course the ordinary and generally accepted meaning of language used in the statute and in valid interpretative regulations of the statute cannot be ignored. Revenue raising is not the sole purpose in such legislation and the rule of strict construction in favor of the taxpayer is not applicable . . ."

The Alaska Act, and these Respondents and their welfare, must be considered in the light of this philosophy. The undisputed facts are these. The men were unemployed. The end of the last season left them jobless. They did not leave present employment. They were not on strike. The employers terminated the contract of the previous year. The men offered to work on the same conditions and wages they enjoyed the previous year. The employers refused. The employers would provide work for the men only on worse conditions and lower wages. The men refused.

To hold under these circumstances that Respondent's unemployment was "due to a labor dispute in active progress at the place of last employment" would be a plain perversion of the Act. It would mean that the Act (denial of its

benefits) could be used to depress wages and conditions. This certainly would not be serving the remedial purpose of this statute. Its object should be as much to maintain existing economic standards (wages and conditions) as to prevent the hardships that flow from unemployment. Why should workers have to suffer wage cuts and poorer conditions in order to receive the benefits of an Act passed for their protection?

Under the Alaska Act, even if employees are disqualified on account of a labor dispute, that disqualification under Section 5(d) is limited to eight weeks. In many of the states, the limitation in time is even less. The reason for these limitations is that the statistical record of labor disputes shows that the average one lasts about eight weeks. (R. p. 638.) Therefore, that was held to be the limit of the disqualification, at least in the Alaska Act, and the employees were entitled to benefits after that period of time even though a labor dispute existed, and continued. This time limitation on the denial of benefits convincingly demonstrates the intention of the Alaska Act, and the intention of almost all similar laws, to pay full benefits in all situations where there is any logical basis for payment.

Accordingly, benefits in this case should be paid unless there is no doubt at all that they should be denied. This is not a private insurance carrier at the bar of this Court whose approach to payment of claims is that the burden is upon a claimant to prove his eligibility. Rather, we have a public agency administering a remedial statute whose guiding standard is to pay the claims unless it clearly appears that an exemption exists. The burden is upon the Commission to disprove eligibility, not upon the claimant to prove it.

## II.

**Before a claimant can be disqualified under Section 5(d) of the Act ALL of the factors of disqualification must be clearly present.**

It is not only the rule as previously expressed that an unemployment insurance act must be liberally construed in favor of paying benefits, but also *all* of the factors of disqualification as provided by the Act must be clearly present before benefits can be denied. Thus, if *any* factor of disqualification is absent, then the claim must be paid. The rule that exceptions from benefits must be strictly construed requires this conclusion.

Thus, under the Alaska Act, a claimant cannot be disqualified for any week, unless it appears *with respect to such week,*

(1) that there is a *"labor dispute"*,

(2) in *"active progress"*,

(3) *"at* the factory, establishment, or other premises at which he is or was *last employed"*,

(4) and that his unemployment is *"due"* to a labor dispute.

See Fierst & Spector, *Unemployment Compensation in Labor* Disputes, 49 Yale Law Review 461 (January, 1940).

If *any one* of these *four elements* is lacking for *any week* during which a claimant is unemployed and claims benefits, he must be awarded benefits for that week. If there is *any doubt* on *any one* of these points, it *must be resolved in favor of* claimant.

## III.

**There was not a "labor dispute" within the meaning of Section 5(d) of the act.**

Certainly there was a "dispute" between the Union and Employers over the terms of the 1940 contract, but it was not a "labor dispute" within the meaning of the Act. The

term "labor dispute" means different things according to different situations in which it is used. *Cf. Willard Sugar Co.* v. *Gentsch, supra.* In the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. A. Secs. 151-166) and the Norris-LaGuardia Act (Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. A., Secs. 101-115) it means what those acts define it to mean, and we agree with those definitions. But both of those Acts, as this one, were enacted for the benefit of workers. The Wagner Act was passed to protect the right of collective bargaining and self-determination in the matter of employee representatives. The Norris-LaGuardia Act was passed to limit the issuance of injunctions against workers. Obviously a broad definition of "labor dispute" is appropriate in those acts.

The policy behind the Wagner Act is declared in the law (29 U. S. C. A. Sec. 151):

> • • • "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection."

The courts and this Court have given effect to that declared policy. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893, 57 S. Ct. 615; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 81 L. Ed. 953, 57 S. Ct. 650.

The term "labor dispute" is accorded the fullest scope. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 82 L. Ed. 1381, 58 S. Ct. 904; *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 83 L. Ed. 682, 59 S. Ct. 508. These and numerous other cases have afforded workers the protection of the Wagner

Act in "labor disputes" against the contentions of employers that no labor disputes existed.

Similarly, the public policy that compelled the enactment of the Norris-LaGuardia Act gave recognition to the right of workers to self-organization and full freedom of association and required "limitations upon the jurisdiction and authority of the courts of the United States" (29 U. S. C. A. Sec. 102). This public policy has been given effect and the term "labor dispute" broadly defined by the decisions of this Court. *United States* v. *Hutcheson*, 312 U. S. 219, 85 L. Ed. 788, 61 S. Ct. 463; *Milk Wagon Drivers' Union, etc.* v. *Lake Valley Farm Products*, 311 U. S. 91, 85 L. Ed. 63, 61 S. Ct. 122.

The reasons underlying the necessity for this law were cogently stated in Frankfurter & Green, *The Labor Injunction*, (MacMillan, 1930) at p. 200:

> ". . . The history of the labor injunction in action puts some matters beyond question. In large part, dissatisfaction and resentment are caused, first, by the refusal of courts to recognize that breaches of the peace may be redressed through criminal prosecution and civil action for damages, and, second, by the expansion of a simple, judicial device to an enveloping code of prohibited conduct, absorbing, en masse, executive and police functions and affecting the livelihood, and even lives, of multitudes. Especially those zealous for the unimpaired prestige of our courts have observed how the administration of law by decrees which through vast and vague phrases surmount law, undermines the esteem of courts upon which our reign of law depends. Not government, but 'government by injunction', characterized by the consequences of a criminal prosecution without its safeguards, has been challenged. . . ."

It is apparent that the term "labor dispute" requires the broadest possible definition in order to effectuate the purposes and policy of these laws.

However, in our case we have a different situation. In the first place, there is no definition of the term "labor dispute" in the Alaska Act. If that term were to have the

same meaning here as it does in the Wagner and Norris-LaGuardia Acts it is fair to assume that the Territorial Legislature would have so declared. The fact that the Legislature was silent on what the term "labor dispute" means does not require a conclusion that its meaning is the same as in the two former statutes. It must be remembered that these federal Acts were passed to meet particular situations and for the protection of workingmen. The Congress, therefore, expressly wrote broad definitions of the term "labor dispute".

The Alaska Act, also, was passed for the benefit and protection of workingmen. Participation in a "labor dispute" causes disqualification, and we have already noted that any exception is strictly construed. Therefore it is logical and correct to conclude that in this Act the term "labor dispute" (which is not defined) must be given the narrowest possible meaning in order to award rather than deny benefits.

In other words, we think it is a fair construction of the Alaska Act to say that the term "labor dispute" means a *strike* or the *leaving of employment* by workers pursuant to a dispute between their union and the employer over wages, conditions, representation, or some other clearly recognized employer-employee controversy.

The unemployment compensation acts provide benefits to workers who are unemployed because *there is no suitable employment available to them.* The "labor dispute" disqualification was inserted in the Act so that unemployment funds would not support a *strike or work stoppage* declared by workers. Generally, there is no "labor dispute" within the meaning of the unemployment compensation acts unless there is a strike or stoppage, or leaving of employment, or a presently existing employer-employee relationship which is terminated as the result of some difference between the parties over wages, hours, conditions of work, representation, etc.

*In our case, of course, there was no presently existing employer-employee relationship at the commencement of the*

*1940 season.* That relationship was terminated by the closing of the 1939 season. All that occurred after the close of the 1939 season were negotiations between the Union and the Employers which did not culminate in a contract for 1940, and the Employers abandoned the 1940 season. These facts do not constitute a "labor dispute" under an employment compensation act.

Several decisions of unemployment commissions and courts in various states may be helpful on this point:

*Pennsylvania Unemployment Commission,* Appeal No. B-44-5-372, C. C. H. Unemp. Ins. Service, Pa. #1980.013, former #8057.04, Aug. 29, 1940.

Claimant was engaged at flat wage to prepare new vein of coal for contract work, during which time union and employer negotiated for contract rate on new vein. Claimant notified by union to stop work which he did. Claimant asked for other work which employer failed to furnish and claimant left work. Held: Claimant not disqualified account labor dispute. *Negotiations were amicable and no overt act was committed by either part . . The bargaining did not constitute a labor dispute.* Claimant's unemployment is due to completion of contract job. (Our italics.)

So in our case, *the negotiations were not a labor dispute,* but were merely an attempt to get a contract for work which never started. Neither the negotiations, nor the failure to reach a contract, nor the ensuing abandonment of the 1940 season caused a labor dispute to occur where there was none. There was no overt act committed here. There was no strike. There was no job to strike. There was no stoppage and no leaving of employment. The Respondents just did not get employment for 1940. However the matter is viewed, there was not a labor dispute within the meaning of the Act.

*Graham* v. *State Unemployment Comm. of Oregon* (Circ. Ct. Oregon, 4th Jud. Dist.), C. C. H. Unemp. Ins. Service., Ore. # 1980.02, former # 8030, Sept. 2, 1940.

Claimants were members of C.I.O. who refused to join A.F.L. At insistence of A.F.L., employer discharged claimants when they refused to join A.F.L. Held: Not labor dispute within meaning of Unemployment Compensation Act.

If it be held that unemployment on account of a jurisdictional dispute as in the *Graham* case does not allow a labor dispute disqualification, that is persuasive authority to reject the disqualification in our case. Obviously, the Oregon Court allowed benefits because the men insisted on their right to belong to a union of their own choosing rather than change unions and remain working. It is equally clear that the men could have remained at work if they had changed unions. The Court found that the Act could not be used to compel a man to belong to a union he did not want to join.

A case similar to ours is considered and benefits allowed in an appeal to the Pennsylvania Unemployment Commission in the following case.

*Pennsylvania Unemployment Commission*, Appeal No. B-44-6-RH-454, C. C. H. Unemp. Ins. Service, Pa. #1980.016, Sept. 25, 1942.

". . . In determining whether or not the suspension of work shall be deemed voluntary by the employees or the employer, consideration shall be given to whether the employees or the employer sought some new advantage not previously existing, sought to add to or detract from the existing employment relationship, or attempted to interject into the prevailing arrangement some new term or terms as a condition of continuing work. If the employer insists upon some new conditions of employment and will continue operations only if same are accepted by the employees, the suspension following the employees' refusal to accept such conditions will be deemed to have been taken at the initiative of the employer, and this, involuntarily on the part of the employees. Conversely, if the employees insist upon some change in the conditions of employment and will continue working only if same are accepted by the employer, a suspension following the employer's re-

fusal will be considered voluntary on the part of the employees. Thus, it must be held that a claimant's unemployment during weeks in which he and other employees were on strike because of the employer's refusal to continue to pay 'yardage' for the removal of certain coal and rock, was not due to a voluntary suspension of work resulting from an industrial dispute where the employer had been paying for such work for a period of several years. The practice of paying for such work had become a prevailing condition of the employment. Therefore when the employer insisted upon a change with reference to payment for such work, the initiative in instituting the change in prevailing conditions lay with him, and the suspension following the employees' refusal to accept the change can not be deemed a voluntary suspension within the meaning of the law . . ."

*Cf. Bonner* v. *Unemployment Compensation Board of Review* (Superior Ct. Pa.), 156 Pa. Super. 367, 40 Atl. (2nd) 106,

where the matter started out as a refusal by the employees to work until certain conditions were met, but then the men offered to return to work, but the employer discontinued operations. It was held that this situation was not an industrial dispute within the meaning of the Act, and benefits were allowed.

So in our case, the Act cannot be used to force men to work on Employer's conditions. If Respondents had accepted what was offered them, they probably could have worked. They refused to accept less than they enjoyed in 1939. It does not seem to us that a remedial statute can any more be used to depress wages and conditions, than it can be used to compel men to join a union not of their own choosing.

*United States Coal Co.* v. *Unemployment Comp. Board of Review* (Ohio Court of Appeals), 66 Ohio App. 329, 32 N. E. (2nd) 763, 135 A. L. R. 927,

Contract between company and union terminated by its terms, March 31, 1939 and work in mines ceased that

day. Negotiations continued until contract reached May 12, 1939. Held: Benefits allowed between March 21-May 12, 1939. "Here there was no combined effort to stop work at a preconceived time. There was simply a conference attempting to work out an agreement between the interested parties. *The only contract between them had ended. No duty rested upon either the operators or the miners. The operators were under no obligation to keep the mines open. The miners were under no obligation to work. There was no contractual obligation*" (Our italics.)

While it is true that the disqualification under the Ohio statute exists only where there is a "strike", the language used in the above decision is persuasive in our case. As in the miners' case, so in ours, there was no contract and no duty resolved on either party. There were just meetings to try to reach a contract. But in the absence of a duty on the part of Respondents to work, and since they declared no strike, left no employment, and committed no overt act, we submit there was no labor dispute as contemplated by the Act.

In their brief, Appellants argue that various terms employed in the Alaska Act, including the term "labor dispute" have "no unvarying legal significance" and that the administrative determination, namely, that of the Alaska Unemployment Commission must be accepted as final in this case.

It should be evident from the cited cases, and just the logic of the case, that the term "labor dispute" has wide and varied meanings, depending on the sense and situation in which it is applied. The Act provides for Court review, and if the findings of fact made by the Commission are *supported by the evidence* then those findings and the conclusions of law based thereon shall be conclusive. In our case, however, the facts support and require exactly contrary findings and conclusions to those made by the Commission on whether a "labor dispute" existed. The Commission of-

fered no reasons for its decision. It just issued its fiat. The declaration of the Commission that the situation was a "labor dispute" is not sufficient to make it one.

The situation here calls for the determination of a question of law, namely, whether the undisputed facts which have been outlined above constitute a "labor dispute" within the meaning of the Act. That is the cardinal question presented to this Court, and one, we submit, which should be resolved in favor of Respondents.

## IV.

### There was not a labor dispute in "active progress" in this case.

Assuming for the sake of argument (but not admitting) that there was a "labor dispute", *we submit that it was not in "active progress" after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay.* The dispute (if there was one) terminated on those dates with respect to each of those areas. The Referee's finding on this score is particularly eloquent and sound and we adopt his findings and argument (Referee's Decision, R. pp. 638-643):

> "The crucial question is: Did the labor dispute continue after these dates and, if so, when did it terminate, if it became terminated at all?
>
> A dispute, or other transaction, it would seem, continues in active progress when one or the other or both disputants, or parties to it, are active concerning it, not passive, when action is taken in relation to it and not when it is permitted to become dormant, for whatever may be the reason. In this case, nothing was done with the matters in dispute after the expiration of the respective dates mentioned, in fact there is a plain implication in announcing these dates that after their expiration no further efforts would be made to bring about an agreement and that the incident would be considered at an end, closed, and disposed of. And so it was treated by both parties. No action was taken by either of them to resume negotiations, no strike

was called by the Union nor did the Employers declare a lockout. Both parties ceased from doing anything concerning the situation.

If, as claimed by counsel for the Employers, the dispute continued at least as long as the 1940 season, we may ask: When did it end? Why limit it to the 1940 season? If the Employers were to decide in 1941 not to operate because no agreement was reached in 1940, would not the dispute then be held to be in active progress during that season also and the men remain unemployed on that account and, under the argument of the Employers would continue to remain unemployed until the Employers decided to commence operations again. Like Banquo's ghost, or John Brown's soul, the dispute would walk or march until the Employers saw fit to lay it low.

The Employers called off the 1940 operations and thereby put an end to the negotiations and the dispute which had raged between them and the Union. The operations having been abandoned, what was there to dispute about? The matter had become a closed incident—'a dead Horse' as the man in the street would say.

In the brief of counsel, numerous references are given to definitions of what constitutes a labor dispute, but none is found dealing with the precise point under consideration and it is fair to say there is none.

Cases are found in the books where miners, in the Appalachian Fields, had contracts with their employers similar in some respect to those entered into between the Union and the Employers in this case and it has been held in Tennessee, which has disqualifying provisions like the one found in our act and now under consideration, that coal miners, during a cessation of activities, were deemed unemployed because of a labor dispute in active progress when the employer and the Union could arrive at no agreement within a period set aside for negotiations and the mines were shut down and remained shut down up to the time of the hearing and they were held disqualified for benefits on account thereof.

These cases are readily distinguishable from the case at bar. In the Miners' case the operations were not seasonal and the dispute was carried on and continued

until the re-opening of the mines. In our case there was no possibility of a re-opening; the time to get ready to catch the fish which the Union was expected to put up had passed and the particular operation had on account thereof become impossible. There was here no time for reconsideration; the die was cast and the Rubicon crossed; there was no possibility of turning back the clock. Preparations for the 1940 operations, if to be carried on at all, were unalterably set to begin at a definite time fixed by the Employers. After that time, they became impossible of performance. The time having expired without reaching an agreement, the operations were called off, the negotiations terminated and the active progress of the labor dispute which had raged for a couple of months came to an end.

It is my opinion that the labor dispute ceased to be in active progress with reference to the Karluk situation on April 10th—five days after the opening of the annual season there; it ceased to be in active progress at the Chignik plant on April 12th—twelve days after the opening of the season there and it ceased to be in progress with reference to operations in Bristol Bay May 3rd—two days before the opening of the season there, as fixed by Benefit Regulation 10 promulgated by the Alaska Unemployment Compensation Commission and that claimants became unemployed after those dates, not account of the existence of a labor dispute in active progress but because there was no employment to be had at these places and that a disqualificaiton on account of the existence of a labor dispute in active progress, after the respective dates mentioned, is not justified under the facts as found and the law as I believe it to be. * * *

For the reasons hereinbefore stated, the Referee determines: * * *

*Third:* That at the time of the commencement of the season in Bristol Bay no labor dispute was in active progress at any of the plants operated in that District in 1939.

It follows that: * * *

*Fourth:* That the claims filed by any of the 1939 Karluk and Chignik employees after the respective

dates mentioned should be allowed; all of said claims to be subject to the statutory waiting period and other provisions of the Alaska Unemployment Compensation Law concerning eligibility to unemployment compensation of all or any of the claimants."

There are other unemployment cases which are persuasive authority leading to the conclusion that if there was a labor dispute in our case, it was not in "active progress." Some of these cases may be summarized as follows:

*Graham* v. *Oregon, supra.*

If there were a labor dispute, it was *not active* after employer acquiesced and laid off workers who refused to leave CIO and join AFL.

*Indiana Unemployment Commission, Appeal Tribunal*, No. 39-LD-51, C.C.H. Unemp. Ins. Service, Ind. #8076.34 (old).

Employees changed affiliation from X to Y union shortly before X union's contract with employer expired. Employer signed contract with Y union. X picketed and Y members prevented from working. Employer refused to negotiate with X because he had contract with Y. Held: Benefits allowed. "Where there is an impossibility of performance between the employer and the X Union, the Appeal tribunal will not hold that there is a dispute in active progress. *The fundamental principal of a dispute presupposes a settlement*, but where the settlement is impossible, the Appeal tribunal will not permit such impossibility to bar benefits to unemployed individuals." (Our italics.)

Similarly here, there was no way in which the Respondent's or their Union could settle the dispute after the Employers abandoned the season. Since settlement was rendered impossible by the Employers' abandonment of the season, Respondents became eligible for benefits at the time the impossibility arose.

*Minnesota Appeal Tribunal*, Dec. Nos. 1190, 1287, C. C. H. Unemp. Ins. Service, Minn. #1980.01, May 21, 1940.

Employer operating in receivership, authorized by Federal Court to sell assets, which it did while strike was in progress at its premises. Employer thereupon ceased doing business in Minn.

Held: Benefits allowed. Dispute ceased date of Court's order allowing sale of assets.

*West Virginia Appeal Tribunal*, Dec. No. AT-652. Affirmed by Board of Review Dec. No. 155; C. C. H. Unemp. Ins. Service, West Va. #1980.03, Aug. 30, 1939.

Claimants' disqualification account labor dispute held to terminate on reaching agreement, although plant did not reopen for 10 days thereafter in order to repair equipment.

So in our case, the ending of negotiations and the dropping of the matter by both parties, ended the dispute (if there was one), and any disqualification which existed prior to that time was thereupon at an end.

## V.

**There was not a labor dispute in active progress "at the factory, establishment or other premises" where respondents "are or were last employed".**

Obviously there was no labor dispute in active progress at the plants or establishments where Respondents "are employed" for the simply reason that they had no employment at the time this case arose.

Therefore, any disqualification on this point must rest upon a labor dispute in active progress at the place where they were "last employed," namely, the previous, or 1939, season. A serious question is at once presented of whether the interim employment on the part of any of the Respondents would not serve to take them out of this disqualification, even if it were assumed to exist. As testified by various workers at the Referee's hearings, they took agricultural and other work in the states in the periods they

were not employed in Alaska. A convincing argument appears that no disqualification should attach to workers in a seasonal industry for participation in a labor dispute unless the seasonal work gets under way, and the workers leave that employment.

The question of whether a labor dispute was in active progress "at the factory, establishment or other premises" at which Respondents "were last employed," must be answered in the negative.

At the outset of the proceedings before the Referee, Respondents by their counsel urged that there should be no disqualification for benefits because there was not "a labor dispute in active progress *at the factory, establishment, or other premises at which the workers were last employed.*" (R. p. 30). This contention was recognized by the Referee in his consideration of the case. (R. p. 635). The Circuit Court found the point controlling. The Appellants rely upon Judge Healy's dissenting opinion that this point was not urged by Respondents, and assert the point was volunteered by the Circuit Court.

It would be more correct to say that Respondents did not rely primarily upon this point, but upon other points which are expounded at greater length in the earlier part of this brief. Nevertheless, the point was made, and has support in the record and in the law. Respondents made the point in their brief before the Circuit Court as follows:

> "The last times Appellants worked at any of the Employers' plants was in 1939. When the 1939 season ended, Appellants ceased to be employees of Employers. Work never started at any of the Employers' Alaska plants during 1940. It follows that there was no labor dispute at the place of last employment." (Respondents' Circuit Court Brief, p. 41, referred to at 149 Fed. (2nd) 453.)

It is true that Respondents' emphasis of this point is different from that of the Circuit Court. The Court says that there was no dispute *at* the *physical* place of last em-

ployment. We say that, but we also say that in a seasonal industry with no workers presently employed there *cannot* be a dispute *at* the *place* of last employment, but in order for a dispute to occur *at* the place of last employment work must get under way, and then the stoppage of work must occur *at* that place.

It follows that the dispute if there was one, and if it was in active progress, was not "at the factory establishment, or other premises" where Respondents "are or were last employed." That is clear because the employment which Respondents had with Appellants terminated at distant plants months before the dispute here occurred, and there could not be a labor dispute within the meaning of the Act unless that employment had actually been resumed at the plants in question, and then terminated by a labor dispute.

## VI.

## Respondents were not unemployed "due" to a labor dispute in active progress at the factory, establishment or other premises where they are or were last employed.

*Respondents' unemployment was "due" to the seasonal nature of the industry and to the fact that their employment ended at the close of the 1939 season, and "due" also to the fact that the Employers tried to force wage cuts and worse conditions on the Respondents and thereby locked them out or prevented them from working.*

Respondents never became re-employed for 1940. There was no guarantee that Respondents or any one of them would have had employment had a 1940 agreement been consummated.

It is admitted that Alaska Salmon Company called off its Bristol Bay season, and had reasons other than a failure to reach an agreement with the union for so doing. (See Mr. Oliver's stipulations, R. p. 589, to the effect that Alaska Salmon would not operate during 1940 under any conditions, even if agreement was reached, after sending letter

to Union under date of April 30, 1940, that this company had abandoned its 1940 operations. (See also Referee's Decision on this point, R. p. 633.) *It follows unquestionably that all workers employed in Alaska by Alaska Salmon in 1939 or entitled to benefits.* Any doubt as to the reason for unemployment must be resolved in favor of Respondents, and if other reasons than a labor dispute contributed to the unemployment, benefits must be paid. Therefore these Respondents must be paid.

*Danzer* v. *Oregon, supra.*

There was evidence that Alaska Packers would have employed one-third fewer men for 1940 on account of the curtailment. Inasmuch as it cannot be determined which one-third of the Alaska Packers' 1939 Bristol Bay employees would not be employed during 1940, had there been an operation in that area, the doubt must be resolved in favor of all who were employed there in 1939, thereby qualifying all of them for benefits under the rule of the *Danzer case.*

Some of the decided cases by various unemployment commissions that employment must be *"due"* to a labor dispute before disqualification attaches are as follows:

*Danzer* v. *Oregon, supra.*

Where there was evidence that closing of plants was due as well to belief by operators that decreased production was necessary to improve the market as to labor dispute, doubt resolved in favor of claimants and labor dispute disqualification disallowed.

*Indiana Appeal Tribunal,* No. 39-LD-6, 7, 9, 10, 11, C.C.H. Unemp. Ins. Serv. Ind. #1980.02, former #8066.06, April 10, 1939.

Worker laid off for lack of work prior to labor dispute. Held: Unemployment not due to labor dispute, even though worker is member of union and participated in dispute.

Same situation and ruling as in above case in following:

*Iowa Appeal Tribunal*, Dec. No. 39A-614-CM, C.C.H. Unemp. Ins. Serv., Iowa #1980.05, Nov. 29, 1939;
*Kansas Unemp. Comp. Comm.*, Dec. No. 28, C.C.H. Unemp. Ins. Serv., Kansas #1980.01, 1939;
*Oklahoma Comp. Comm. Board of Review*, Dec. No. 51-AT-40, C.C.H. Unemp. Ins. Serv., Okla. #1980.01, Nov. 20, 1940;
*Michigan Unemp. Comp. Comm.*, Ref. Dec. No. 4101, 7728, C.C.H. Unemp. Ins. Serv., Mich. #1980.07, 1940;
*Massachusetts Unemp. Comp. Comm.*, Dec. No. 1358, Mass. A., C.C.H. Unemp. Ins. Serv., Mass. #1955.011, May 27, 1940.

The following case is in point in our situation:

*Michigan Unemp. Comp. Comm.*, Ref. Dec. No. 1589, C.C.H. Unemp. Ins. Serv., Mich. #8049.06 (old):

Employer operates cooperative mine. All employees laid off at end of season. Immediately after seasonal lay-off employer became involved in labor dispute. Held: *Unemployment is due to seasonal lay-off, and not labor dispute regarding renewal of union contract which was to govern future.* (Our italics.)

Thus it will be noted that the unemployment commissions of the various states uniformly follow the rule that where there is a lay-off for lack of work or a season ending, even though the employer thereafter becomes involved in a labor dispute which prevents work resuming, the *unemployment is found to be due to the lay-off or season ending, and not the labor dispute, and benefits are paid accordingly.*

Finally, and an extremely vital and important point, the Employers in this case as we have noted tried to force wage cuts and worse conditions on the Respondents. Nowhere in the Record is there evidence of any offer on the part of the Employers to renew the 1939 agreement which they had terminated.

The workers and their union made numerous offers to renew the 1939 agreement. The Employers did not even offer the union a definite 1940 contract. The closest they

came is the offer reported in the Record at p. 333 to have the agreement reached for 1940 at Seattle, apply to the operations out of San Francisco.

The unemployment of Respondents was "due" to an Employer attempt to reduce wages and cut down conditions. In effect, the workers were "locked out" of the 1940 season. This is not a labor dispute as contemplated by the Act.

See *Bunny's Waffle Shop, Inc.* v. *Calif. Employment Comm.*, 24 Cal. (2d) 735, where the employer cut wages and the workers left their employment. Previously the workers, through their union, had refused to negotiate with the Employers' Association. In order to compel negotiations the employers cut wages and imposed other less favorable conditions than the workers had enjoyed. The Court held that a labor dispute was in progress, but that the workers unemployment was "due" to the employers' attempt to cut wages and worsen conditions, which constituted a lockout, and not due to a labor dispute.

The situation in our case is analogous to the cited case, and this point alone should be sufficient to support a decision in favor of Respondents.

## CONCLUSION.

It is respectfully submitted that the decision of the Circuit Court should be affirmed, but that this Court should find that no labor dispute within the meaning of the Act occurred at the time in question, and that accordingly full benefits should be paid to all the claimants.

Dated at Washington, D. C., February 20, 1946.

Respectfully submitted,

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*Of Counsel.*

# SUPREME COURT OF THE UNITED STATES

No. 25.—October Term, 1946.

| | |
|---|---|
| Unemployment Compensation Commission of the Territory of Alaska et al., Petitioners, v. Frank L. Aragan and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5 et al., Respondents. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit. |

[December 9, 1946.]

The Chief Justice delivered the opinion of the Court.

In May, 1940, the individual respondents filed claims for unemployment benefits with the Unemployment Compensation Commission of the Territory of Alaska. After an initial determination by an examiner and after decision by a referee, the Commission held that the claimants were disqualified from receiving benefits for a period of eight weeks since their unemployment was due to a labor dispute in active progress within the meaning of the Alaska Unemployment Compensation Law.[1] The United States District Court affirmed the Commission's holding in all particulars. The Circuit Court of Appeals reversed, one judge dissenting. We granted certiorari because of the public importance of the questions involved.[2]

[1] Extraordinary Session Laws of Alaska, 1937, Chapter 4 as amended by Chapters 1 and 51, Session Laws of Alaska, 1939.

[2] The Alaska statute is part of the legislative scheme for unemployment compensation induced by the provisions of the Social Security Act of 1935. 49 Stat. 620, 626–627, 640. It is said that forty-three states and territories have provisions similar to those in the Alaska law disqualifying from unemployment benefits persons unemployed due to a labor dispute.

Among the petitioners are three corporations engaged principally in the business of salmon fishing, canning, and marketing. One of the companies owns canneries and other facilities at Karluk, Chignik, and Bristol Bay, Alaska. The other two companies operate only at Bristol Bay. Catching and canning salmon is a seasonal activity.[3] The companies customarily hire workers at San Francisco at the beginning of the season, transport them to the Alaskan establishments, and return them to San Francisco at the season's end. Similar operations are carried on by other companies out of other west coast ports, notably Seattle and Portland. The individual respondents are all members of the Alaska Cannery Workers Union Local No. 5, and each worked in Alaska for one of the three companies during the 1939 season. Local No. 5 is the recognized bargaining agent of the cannery workers in the San Francisco area.

In 1939, as had been the practice for some years, the union entered into a written agreement with the companies covering in considerable detail the matters of wages, hours, conditions of employment, and the like. After the end of the 1939 season, the companies terminated the agreement then in effect, which made necessary the negotiation of a new contract for the 1940 season. Consequently, on March 6, 1940, the companies through their authorized agent, Alaska Salmon Industry, Inc., invited the union to enter into negotiations for a new agreement. In a series of meetings held shortly thereafter, serious disagreement appeared which quickly developed into an impasse on the question of wages. The union demanded wages equal to or in excess of those paid under the terms of the 1939 agreement. The companies offered wages which for the most

[3] As provided by Benefit Regulation No. 10 of the Alaska Unemployment Compensation Commission, the season at Karluk extends from April 5 to September 5, at Chignik from April 1 to September 10, and at Bristol Bay from May 5 to August 25.

part were below those paid in 1939. On April 1, 1940, the union caused the negotiations as to the wage issue to be transferred from San Francisco to Seattle where an attempt was being made to effect a coastwide agreement to cover all west coast companies carrying on salmon operations in Alaska. Local No. 5, however, refused to sign a "memorandum" agreement incorporating such terms as might result from the concurrent Seattle negotiations.

On April 3, the companies notified the union that if operations were to be carried on in Karluk and Chignik during the 1940 season, an agreement with respect to the former would have to be reached by April 10 and with respect to the latter by April 12. Although negotiations proceeded up to the deadlines, the parties arrived at no understanding, and on April 22 Alaska Salmon Industry, Inc., formally announced that no operations would be carried on in Karluk and Chignik during 1940. Meetings continued, however, in an effort to come to an understanding with respect to Bristol Bay before the arrival of the May 3d deadline which had been set for those operations. Although federal mediators intervened in an attempt to discover a suitable compromise, the deadline date passed without agreement. It appears that after May 3, negotiations continued in Seattle where a contract affecting only canners and workers operating out of ports other than San Francisco was finally executed on May 29. The companies and union which are involved in this case were specifically excluded from the terms of the 1940 Seattle agreement.

Shortly after May 3, the individual respondents filed claims for unemployment benefits with the Alaska Unemployment Compensation Commission. The Commission, acting through an examiner, held that respondents were disqualified from receiving payments for the statutory period of eight weeks under the provisions of § 5 (d) of the Alaska law. At the time this case arose, that section

stated in part: "An individual shall be disqualified for benefits . . . (d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute . . ."

In pursuance of the appeal provisions of the statute,[4] respondents asked for a review of the examiner's determination. The Commission, in response to this application, appointed a Referee to pass on the disputed claims. The scope of the hearings was confined to the issue of whether the unemployment of the claimants was caused by the existence of a labor dispute. At the end of the proceedings, the Referee came to the conclusion that although there was a labor dispute in existence initially, the dispute was no longer "in active progress" after the passing of the dates fixed by the companies for consummation of the working agreements. Consequently, the disqualification under § 5 (d) with respect to each of the localities was held no longer to attach after the passage of the respective deadline dates.[5]

The Commission, on appeal,[6] reversed the Referee's decision and held that within the meaning of the Alaska law, a labor dispute was in active progress throughout the entire eight week statutory period of disqualification

[4] Section 6 (c) and § 6 (d). Chapter 1, Session Laws of Alaska, 1939.

[5] The Referee found that there had been unemployment due to a labor dispute in active progress at Karluk from April 5, when the season opened, to April 10, the deadline date, and at Chignik from April 1 to April 12. Since the deadline date with respect to Bristol Bay was set two days before the season opened there, the Referee found that there was no dispute in active progress at those plants.

[6] This procedure was in pursuance of § 6 (e) of the Act as amended by Chapter 1, Session Laws of Alaska, 1939.

beginning with the opening of the season in each locality. Consequently, no benefits were payable until the expiration of the disqualification period. The United States District Court affirmed the Commission's decision in all particulars.[7] The Circuit Court of Appeals, with one judge dissenting, reversed, however, on the ground that the labor dispute was not physically *at* the Alaska canneries where the individual respondents had been last employed.

We are met at the outset with the contention that the facts of this case do not present a "labor dispute" within the meaning of § 5 (d) of the Alaska Act. Respondents urge that the term must be narrowly construed to require a strike or leaving of employment which, in turn, calls for a presently-existing employment relation at the time the dispute arises.[8] According to this view, the term would not cover a situation, such as presented here, where the controversy precedes the employment. Respondents would justify this restricted construction on the ground that the Unemployment Compensation Law is remedial

[7] Section 6 (i) of the Act provides that within thirty days after the decision of the Commission has become final, any party aggrieved may secure judicial review in the United States District Court. The section states, "In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

[8] A number of state courts in construing similar legislation have found "labor disputes" to have existed in situations where no contractual employment relation presently existed. Each of these cases involved a work stoppage in the interval between the expiration of an old labor contract and the consummation of a new agreement. *Miners in General Group* v. *Hix*, 123 W. Va. 637, 17 S. E. (2d) 810 (1941); *Ex parte Pesnell*, 240 Ala. 457, 199 So. 726 (1940); *Barnes* v. *Hall*, 285 Ky. 160, 146 S. W. (2d) 929 (1940); *Block Coal & Coke Co.* v. *United Mine Workers of America*, 177 Tenn. 247, 148 S. W. (2d) 364 (1941); *Sandoval* v. *Industrial Comm'n*, 110 Colo. 108, 130 P. (2d) 930 (1942).

legislation, and any provision limiting benefits under the Act should be narrowly interpreted.

The term "labor dispute", is not defined in the statute. The term appears in the Act in one other connection, however. Section 5 (c) (2) (A) provides that benefits under the Act will not be denied any individual, otherwise eligible, who refuses to accept new work "if the position offered is vacant due directly to a strike, lockout, *or other labor dispute*." The Social Security Act of 1935 [9] requires that the state or territorial law contain a provision to this effect before the legislation can be approved by the Social Security Board. Obviously, for the purposes of § 5 (c) (2) (A), the term, "labor dispute," has a broader meaning than that attributed to it by respondents. Unless the Territorial Legislature intended to give a different meaning to the same language appearing in another subdivision of the same section, the term must be given a broader meaning than that contended for by the respondents, for the purposes of § 5 (d) as well. We need not determine whether "labor dispute" must in all cases be construed as broadly as it is defined in the Norris-LaGuardia Act,[10] and the

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[9] 49 Stat. 640, 26 U. S. C. § 1603 (5) (A).

[10] 47 Stat. 70, 29 U. S. C. § 101. The Norris-LaGuardia Act contains the following definition: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 47 Stat. 73, 29 U. S. C. § 113 (c). A number of state courts have found this and the similar definition in the National Labor Relations Act persuasive in their construction of the term appearing in unemployment compensation legislation similar to the Alaska Act. *Miners in General Group* v. *Hix*, 123 W. Va. 637, 17 S. E. (2d) 810 (1941); *Barnes* v. *Hall*, 285 Ky. 160, 146 S. W. (2d) 929 (1940); *Ex parte Pesnell*, 240 Ala. 457, 199 So. 726 (1940); *Sandoval* v. *Industrial Comm'n*, 110 Colo. 108, 130 P. (2d) 930 (1942). The Alabama legislature incorpo-

National Labor Relations Act.[11] But here there was full-scale controversy. Companies engaged in carrying on a seasonal business were ranged against a union representing seasonal workers who had been employed by the companies in the previous year. Dispute there certainly was; and the subject of that dispute consisted of matters usually contested in labor disputes as that term is normally understood.[12] Since we find nothing to indicate that the Territorial Legislature intended a contrary result, we conclude that the Commission might properly find a "labor dipute" here presented within the meaning of § 5 (d) of the Alaska Act.

We think that there is evidence in the record to support the Commission's conclusion that respondents' unemployment was "due" to a labor dispute insofar as that holding relates to the individual respondents employed in 1939 by the Alaska Packers Association and the Red Salmon Canning Company. At the hearings before the Referee the respondents attempted to establish that the companies called off their 1940 operations for reasons other than their inability to negotiate a satisfactory labor agreement. It was argued, for example, that the companies feared a poor catch as a result of governmental restrictions on fishing applicable to the 1940 season. The evidence adduced before the Referee indicates that both of the above-mentioned companies made extensive preparations for the 1940 operations. In anticipation, equipment and supplies of the value of several hundred thousand dollars were purchased. Ships were prepared and held in readiness for the

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rated the definition appearing in the Norris-LaGuardia Act into the Alabama unemployment compensation act. Ala. Code, Tit. 26 § 214 (A).

[11] 49 Stat. 449, 29 U. S. C. § 151.

[12] The Examiner, the Referee, the Commission, the District Court, and presumably the Circuit Court of Appeals all found a "labor dispute" to have existed, at least before the arrival of the deadline dates.

expeditions. The Referee found that these companies negotiated in good faith and failed to operate in Alaska during the 1940 season only because of their inability to negotiate satisfactory labor agreements before the passing of the deadline dates. There is evidence that the Alaska Packers Association expected to hire about two-thirds the number of workers in 1940 it had employed in 1939. But there is nothing in the record to establish that any of the claimants in this action would have been unemployed as a result of this contemplated curtailment in activity or if any of the respondents would have been affected, which of their number would have been unemployed. It appears that the Red Salmon Canning Company expected to use the same number of workers in 1940 as in 1939, or possibly a few more. Under these circumstances, we think that the Commission's finding that the unemployment was "due" to the labor dispute, should stand, insofar as it relates to the claimants indicated.

But a different situation is presented with reference to the respondents employed by the Alaska Salmon Company in 1939. That company has an establishment only at Bristol Bay. On April 30, three days before the deadline relating to the Bristol Bay operations, Alaska Salmon withdrew from the negotiations with the union and announced that it was unable to send an expedition to Alaska in 1940. The Referee found that the withdrawal was caused primarily by factors other than the company's inability to negotiate a satisfactory labor contract. At the hearings before the Referee, counsel for the company stipulated that even though the other companies had negotiated a labor agreement with the union before the deadline date, Alaska Salmon would have conducted no operations out of San Francisco in 1940 after its withdrawal from negotiations. We conclude that the record does not support the finding of the Commission that the respondents employed by the Alaska Salmon Company in 1939 were

unemployed "due" to a labor dispute at the establishment at which last employed.

Respondents urge that, assuming their unemployment was due to a labor dispute, there was no labor dispute in "active progress" within the meaning of the Act after the passage of the deadline dates. It is argued that when the expeditions were abandoned by the companies the dispute must necessarily have terminated since there was no possible way in which negotiations could have brought about a settlement. It should be observed, however, that the record does not reveal that negotiations abruptly terminated with the passing of the last deadline date. Conferences continued at Seattle in which both the companies and the union were represented. The respondents considered the negotiations sufficiently alive to make an offer of terms at least as late as May 29. Even if it be assumed that at some time within the eight week period of disqualification the point was reached when all possibility of settlement disappeared, it does not follow that the Commission's finding of a dispute in "active progress" must be overturned. Here, as in *Labor Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944), the question presented "is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially." To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings. The "reviewing court's function is limited". All that is needed to support the Commission's interpretation is that it has "warrant in the record" and a "reasonable basis in law". *Labor Board* v. *Hearst Publications, Inc.*, *supra*; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125 (1939).

Applying these tests, we are unable to say that the Commission's construction was irrational or without support in the record. The Commission apparently views a dispute as "active" during the continuance of a work stoppage induced by a labor dispute. That agency might reasonably conclude that the unemployment resulting from such work stoppage is not of the "involuntary" nature which the statute was designed to alleviate, as indicated by the statement of public policy incorporated in the Act by the Territorial Legislature.[13] We see nothing in such a view to require our substituting a different construction from that made by the Commission entrusted with the responsibility of administering the statute.[14]

Nor can we accept the argument of the majority of the Court of Appeals that since negotiations between the companies and the workers were carried on in San Francisco and Seattle, the dispute could not be said to be "at" the Alaskan establishments as required by the statute. So far as we are able to determine, this issue was injected for the first time by the opinion of the majority of the Court

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[13] The "Declaration of Territorial Public Policy" states that "*Involuntary unemployment* is . . . a subject of general interest and concern which requires appropriate action by the legislature." It is further stated that the public welfare demands the compulsory setting aside of unemployment reserves "for the benefit of persons unemployed *through no fault of their own*." Chapter 4, Extraordinary Session Laws of Alaska, 1937.

Several state courts have concluded that the disqualification relating to unemployment due to a labor dispute is a reflection of the broad policy of the legislation to compensate only persons involuntarily unemployed. *Barnes* v. *Hall*, 285 Ky. 160, 146 S. W. (2d) 929 (1940); *Deshler Broom Factory* v. *Kinney*, 140 Neb. 889, 2 N. W. (2d) 332 (1942); *Sandoval* v. *Industrial Commission*, 110 Colo. 108, 130 P. (2d) 930 (1942).

[14] *Labor Board* v. *Hearst Publications*, *supra*; *Rochester Telephone Corp.* v. *United States*, *supra*. Cf. *Social Security Board* v. *Nierotko*, 327 U. S. 358 (1946).

of Appeals. The contention does not seem to have been raised or pressed by respondents up to that point. The responsibility of applying the statutory provisions to the facts of the particular case was given in the first instance to the Commission. A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofor presented and deprives the Commission of an opportunity to consider the matter, make its ruling, and state the reasons for its action.[15] Nor do we find the argument advanced below convincing on its merits. It is clear that the subject matter of the dispute related to the operation of the Alaskan establishments. As a result of the dispute the normal activities involved in catching and canning salmon were not carried on throughout the 1940 season at any of those establishments. We do not consider significant the fact that the companies and the union did not negotiate at the canneries or on the ships in Alaskan waters. A legislature familiar with the nature of seasonal operations carried on in the Territory could hardly have been unaware of the fact that companies and workers customarily carried on negotiations far distant from the Alaskan establishments. It seems unlikely that it was intended that this ordinary and usual procedure should defeat the disqualification for benefits incorporated in the Act. Furthermore, it should be observed that the respondent union voluntarily entered into the negotiations conducted at San Francisco and Seattle and at no time challenged the propriety of this practice. Thus if we assume with respond-

[15] Section 6 (h) of the Act states that judicial review of the Commission's decision "shall be permitted only after a party claiming to be aggrieved thereby has exhausted his administrative remedies as provided in the Act." Cf. *Myers* v. *Bethlehem Shipbuilding Co*., 303 U. S. 41, 50–51 (1938); *Regal Knitwear Co.* v. *Labor Board*, 324 U. S. 9, 13 (1945); *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 196–197 (1941).

ents that this issue is properly presented for consideration, we conclude that under the circumstances of this case the dispute was "at the factory, establishment, or other premises" in the sense intended by the Territorial Legislature.

For the reasons stated, the judgment of the Circuit Court of Appeals is affirmed insofar as it holds that the statutory eight-week period of disqualification is inapplicable to the individual respondents employed by the Alaska Salmon Company in 1939. In all other particulars, the judgment of the Circuit Court of Appeals is reversed and the case remanded to the District Court with instructions to remand for further proceedings pursuant to this opinion.